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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/341,299	08/31/1999	VERONICA S. ROBINSON	XI/P6407US0	4968

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EXAMINER

LEVY, NEIL S

ART UNIT

PAPER NUMBER

1616

DATE MAILED: 03/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09 341299

Applicant(s)

Robinson

Examiner

MBL Ley

Group Art Unit

146

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—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 3/4/03
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-30 is/are pending in the application.
- ☐ Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-30 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____.
 - ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

Office Action Summary

Receipt is acknowledged of CPA of 3/4/03.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

There is no abstract. Please provide one on a separate page.

Claims 1, 2, 5, 8, 16-18, 21 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over page 246335.

The rejection of record is maintained. Application of the claimed composition and production thereof, in a nontoxic form (according to page) is that of the instant pest control methods and products, thus the effects would be the same. Note page does not limit to any particular ratio, thus includes that instantly claimed, which then would heat and release, and harden.

Claims 1, 16 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Tucci et al. 6015570.

The rejection of record is maintained. Applicants' wax, and ratio is not specified; Tucci is seen as providing it, even a small proportion would do what applicant shows it does, when warmed by body. However, room temperature is not specified, and neither is the location. Examiners' experience is that some locales are cold, some hot; room temp in Minneapolis was @ 70°, but in the Philippines was 90°, in the summer. The wax would then act as wax normally would act; melt, and release some repellent.

Claims 1-30 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the

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application was filed, had possession of the claimed invention. The factors to be considered in determining whether a disclosure meets the enablement requirement of 35 U.S.C. 112, first paragraph, have been described in *In re Wands*, 8 USPQ2d 1400 (Fed.Cir. 1988). Among these factors are: (1) the nature of the invention; (2) the state of the prior art; (3) the relative skill of those in the art; (4) the predictability or unpredictability of the art; (5) the breadth of the claims; (6) the amount of direction or guidance presented; (7) the presence or absence of working examples; and (8) the quantity of experimentation necessary. When the above factors are weighed, it is the examiner's position that instant disclosure fails to meet the enablement requirement for the following reasons: The invention as now claimed permits of repellents directly against the skin it is not at all clear how any of unspecified repellents, in unspecified amounts, could prevent unspecified parasites from any place other than the already strip covered area; thus also potentially toxic over extended periods of exposure. It is also unclear what "treat" is intended to mean as a claim limitation.

Are we concerned with a disease to be treated, infestation to be prevented-the issue of toxicity continues; P.I. cites permethruium as causing skin irritation; it is not excluded in the language of claim 1. The applicant favors pyrethrum. Shown by Casida's review to be a known allergenic material as of 1973. Plant extracts and plant materials are known to be irritants and allergenic, in the common arena. Applicant's identification of support for "non-toxic" is not at page 6-8, as far as examine can determine. As to solid form, note that body temperature may be less than environmental temperature (Arizona in summer).

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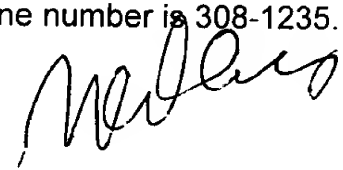
Claims 1-30 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The language "non-toxic" is not evident in the specification.

Applicant's arguments filed 7/22/02 have been fully considered but they are not persuasive. Applicants' arguments/declaration were considered at the last office action of 9/04/02. However, we have reconsidered and the rejections overcome have been withdrawn; weight has been given to the article to be applied to an article of clothing. Absent specification of % of wax, claim 30 remains unallowable. The issue of non-toxic remains-certainly pyrethrum as can any plant material, be allergenic.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is 308-2412. The examiner can normally be reached on Tuesday- Friday 7:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees can be reached on 308-4628. The fax phone number for the organization where this application or proceeding is assigned is 308-4242.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-1235.



NEIL S. LEVY
PRIMARY EXAMINER